

FILED
DISTRICT COURT OF GUAM
NOV 17 2006 *mba*
MARY L.M. MORAN
CLERK OF COURT

Attorneys for Defendant, Cross-Claimant
Counterclaimant, and Third-Party Complainant
S.J. GARGRAVE SYNDICATE 2724

TERRITORY OF GUAM

Civil Case No.: 06-00011

**REQUEST FOR JUDICIAL
ASSISTANCE FOR SERVICE OF
PROCESS UPON A FOREIGN
CORPORATION (AL BUHAIRA
NATIONAL INSURANCE COMPANY)
AND LETTER ROGATORY (FED. R.
CIV. P. 4(f)(2)(B))**

MARWAN SHIPPING & TRADE CO., FIVE
SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in
personam*,

Defendants.

Complaint Date: April 19, 2006
Trial Date: None Set

ORIGINAL

1 S.J. GARGRAVE SYNDICATE 2724,

2 Cross-Claimant,

3 vs.

4 MARWAN SHIPPING & TRADE CO., FIVE
5 SEAS SHIPPING CO., LLC, UNITED
6 STATES OF AMERICA,

7 Cross-Defendants.

8 S.J. GARGRAVE SYNDICATE 2724,

9 Third-Party Plaintiff,

10 vs.

11 NAVIGATORS PROTECTION &
12 INDEMNITY; AL-BUHAIRA NATIONAL
INSURANCE COMPANY,

13 Third-Party Defendants.

14 **REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE**

15 **AND LETTER ROGATORY**

16 **Writ: Third-Party Summons; First Amended Third-Party Complaint of S.J.**
17 **GARGRAVE SYNDICATE 2724 ("Gargrave").**

18 The District Court of Guam, Territory of Guam, presents its compliments to the
19 appropriate Judicial Authority of the United Arab Emirates and requests international judicial
20 assistance to effect service of process upon AL BUHAIRA NATIONAL INSURANCE
21 COMPANY ("Al Buhaira"), a named third-party defendant in the above-captioned civil
22 proceeding currently pending before this court. This Court requests the assistance described
23 herein as necessary in the interests of justice. It has been represented to this court that third-party
24 defendant Al Buhaira is doing business at the following address:

25 **Head Office:**

26 **Al Buhaira National Insurance Company**
27 **Al Buhaira Tower, Khalid Lagoon**
28 **P.O. Box 6000**
Sharjah
United Arab Emirates

1 Telephone: 06-5174444
2 Facsimile: 06-5748855

3 **Factual Allegations of the Case:**

4 The government of the UNITED STATES OF AMERICA ("United States") has sued
5 MARWAN SHIPPING & TRADE CO. ("Marwan"), FIVE SEAS SHIPPING CO., LLC ("Five
6 Seas"), and Gargrave, alleging that a ship, *M.V. Ajman 2*, owned, operated, and/or chartered by
7 Marwan and Five Seas, and allegedly insured by Gargrave, caused damages when it entered the
8 territorial waters of Guam, a territory of the United States.

9 Al Buhaira issued protection and indemnity insurance to Marwan and/or Five Seas for
10 *M.V. Ajman 2*. Therefore, Gargrave now seeks to be indemnified by Al Buhaira.

11 **Documents to be Served Pursuant to This Request for Assistance:**

12 The District Court of Guam respectfully requests that the appropriate judicial authority in
13 the United Arab Emirates cause as many copies as necessary to comply with the laws of the
14 United Arab Emirates of the attached documents, to wit, First Amended Third-Party Complaint of
15 Gargrave, Third-Party Summons, and Verified Complaint of the United States, to be served upon
16 Al Buhaira at the above-described address, or at a place deemed appropriate by the appropriate
17 Judicial Authority of the United Arab Emirates, in the manner prescribed for service of similar
18 documents under the laws of the United Arab Emirates. This Court further respectfully requests
19 that, after service has been made, to execute a Certificate/Proof of Service (such as the one served
20 with this request) and return it, together with a copy of the documents served, to the Court at the
21 following address:

22 Clerk of the Court
23 United States District Court
24 District of Guam
25 Fourth Floor, U.S. Courthouse
520 West Soledad Avenue
Hagatna, Guam 96910
United States of America

26 The attorney for the Third-Party Complainant, Gargrave, stands ready to reimburse your
27 honorable authority for all reasonable expenses insofar as authorized by law of the United Arab
28 Emirates, or treaty, that are incurred in executing this request for international judicial and

1 diplomatic assistance. This Court also assures your authority that it will reciprocate with similar
2 assistance in like cases.

3 The Court extends to the judicial authorities of the United Arab Emirates the assurances of
4 its highest consideration.

5 DATED: November 17, 2006

6 By:

Mary L.M. Moran
Mary L.M. Moran
[Court Seal]

8 Clerk of the Court
9 United States District Court
10 District of Guam
11 Fourth Floor, U.S. Courthouse
12 520 West Soledad Avenue
13 Hagatna, Guam 96910
14 United States of America
15 Telephone: 671 473 9100
16 Facsimile: 671 473 9152

17
18
19
20
21
22
23
24
25
26
27
28
RECEIVED
NOV 17 2006
DISTRICT COURT OF GUAM
HAGATNA, GUAM

CERTIFICATE/PROOF OF SERVICE

I, _____ (name), a person authorized to effect service of legal process in the United Arab Emirates by virtue of my title as _____, hereby certify that pursuant to the laws of the United Arab Emirates, on the _____ day of _____ 200____, I caused to be served true and correct copy of the following documents

1. **FIRST AMENDED THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE;**
2. **THIRD-PARTY SUMMONS TO AL BUHAIRA;**
3. **VERIFIED COMPLAINT OF THE UNITED STATES;**

on Third-Party Defendant:

AL BUHAIRA NATIONAL INSURANCE COMPANY

in the following manner:

☐ Served personally upon a person authorized by law to accept service of process for AL BUHAIRA NATIONAL INSURANCE COMPANY.
Place of Service and person served: _____

☐ Some other manner permitted by the laws of the United Arab Emirates. Please describe manner of service: _____

I declare that the foregoing information is true and correct, this _____ day of _____, 200____, executed at:

Address of Server: _____

Signature of Server: _____

ORIGINAL

1 **THOMAS M. TARPLEY, JR.**
2 **TARPLEY & MORONI, LLP**

3 Bank of Hawaii Building
134 Soledad Avenue, Suite 402
4 Hagatna, Guam 96910
Telephone: (671) 472-1539
5 Facsimile: (671) 472-4526
Electronic mail: tarpley@guam.net

6 **FORREST BOOTH** (Cal. Bar No. 74166) (admitted pro hac vice)
7 **RYAN C. DONLON** (Cal. Bar No. 229292) (admitted pro hac vice)
8 **SEVERSON & WERSON**

9 A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

10 Attorneys for Defendant, Counter-Complainant,
11 Cross-Complainant, and Third-Party Complainant
S.J. GARGRAVE SYNDICATE 2724
8ZP637W

12 **IN THE DISTRICT COURT OF GUAM**
13 **TERRITORY OF GUAM**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16
17 vs.

18 INCHAPE SHIPPING SERVICES GUAM,
19 LLC,

20 Plaintiff in Intervention,

21 vs.

22 MARWAN SHIPPING & TRADING CO.,
23 FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in*
personam,

24 Defendants.

25 AND CROSS-CLAIMS, COUNTERCLAIM,
26 AND CLAIM IN INTERVENTION
27
28

FILED

DISTRICT COURT OF GUAM

SEP 20 2006

MARY L.M. MORAN
CLERK OF COURT

Civil Case No.: 06-00011

**FIRST AMENDED THIRD-PARTY
COMPLAINT OF S.J. GARGRAVE
SYNDICATE 2724**

Complaint Date: April 19, 2006

Trial Date: None Set

S.J. GARGRAVE SYNDICATE 2724 (hereinafter “Gargrave”), an unincorporated association, for a Third-Party Complaint against NAVIGATORS PROTECTION & INDEMNITY, a corporation, and AL-BUHAIRA NATIONAL INSURANCE CO., a corporation (both hereinafter collectively the “Third-Party Defendants”), alleges as follows:

JURISDICTION

1. This is a case of Admiralty and Maritime jurisdiction, as hereinafter more fully appears; it is an Admiralty and Maritime claim within the meanings of Rules 9(h) and 14(c) of the Federal Rules of Civil Procedure. This Court has jurisdiction pursuant to 28 U.S.C. § 1333(1). This Court also has ancillary and/or pendent jurisdiction over the matters set forth herein.

VENUE

2. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

PARTIES

3. Plaintiff Gargrave is an unincorporated association organized and existing under the laws of the United Kingdom, with its principal place of business at London, England. At all relevant times, Gargrave was an insurer in the business of writing marine insurance, including issuing Certificates of Financial Responsibility (hereinafter “COFRs”).

4. Gargrave is informed and believes that third-party defendant NAVIGATORS PROTECTION & INDEMNITY (hereinafter “Navigators”), at all times mentioned herein, was and now is a corporation duly organized and existing under the laws of the United Kingdom, with its principal place of business at London, England. Navigators is an insurer in the business of underwriting marine insurance, particularly protection & indemnity (hereinafter “P&I”) insurance and excess P&I insurance. Gargrave is informed and believes that at all relevant times, Navigators was the excess P&I insurer for the M/V AJMAN 2.

5. Gargrave is informed and believes that third-party defendant AL-BUHAIRA NATIONAL INSURANCE CO. (hereinafter "Al-Buhaira"), at all times mentioned herein, was and now is a corporation duly organized and existing under the laws of the United Arab Emirates.

1 Al-Buhaira is an insurer, engaged in underwriting marine insurance risks, particularly P&I risks at
2 the primary layer. Gargrave is informed and believes that at all relevant times, Al-Buhaira was
3 the primary P&I insurer for the M/V AJMAN 2.

4 6. Plaintiff UNITED STATES OF AMERICA (hereinafter "United States") has filed
5 a Verified Complaint of the United States herein (hereinafter the "Verified Complaint"), which is
6 incorporated in this Third-Party Complaint by reference, naming Gargrave as a defendant, among
7 others, and seeking to recover costs which the United States allegedly has expended in responding
8 to, preventing, and cleaning up pollution which allegedly occurred at Apra Harbor, Guam, in or
9 about August and September of 2004.

10 FIRST CAUSE OF ACTION

11 (Equitable Indemnity Against Navigators and Al-Buhaira)

12 7. Gargrave refers to and incorporates by reference as though fully set forth herein
13 each and every foregoing paragraph of this Third-Party Complaint.

14 8. Gargrave denies any liability for the allegations set forth in the Verified
15 Complaint, and instead alleges that all events and happenings referred to therein were caused and
16 created by the active negligence and/or intentional willful misconduct and failure to perform
17 duties and contractual obligations by Navigators and/or Al-Buhaira. Gargrave further asserts that
18 Al-Buhaira should have responded, in the first instance, to the demand for pollution response,
19 abatement and cleanup of the United States, and Navigators should have responded secondarily,
20 as the excess P&I insurer. In the event Gargrave is adjudged liable to the United States under the
21 Verified Complaint, any fault or liability of Gargrave, which is vigorously denied, would be
22 passive in nature and secondary, as opposed to the active and primary fault and breaches of
23 contract by Al-Buhaira and Navigators.

24 9. If any judgment should be rendered in favor of the United States or others against
25 Gargrave, Gargrave will be entitled to full indemnification from Al-Buhaira and/or Navigators,
26 and each of them, and Gargrave is entitled to recover in equitable indemnity from Al-Buhaira
27 and/or Navigators the full amount of any said judgment, in addition to attorneys' fees and costs.

1 **SECOND CAUSE OF ACTION**

2 **(Contribution Against Al-Buhaira and Navigators)**

3 10. Gargrave refers to and incorporates by reference as though fully set forth herein
4 each and every foregoing paragraph of this Third-Party Complaint.

5 11. As a direct and proximate result of Al-Buhaira's and Navigators' breaches of
6 contract and of their respective duties to their insureds, and to others, Gargrave has suffered, or
7 potentially may suffer, various damages in an amount to be proven at the time of trial.

8 12. As a result of Gargrave's potentially having to pay amounts in excess of its proper
9 liability, if any, Gargrave is and will be entitled to legal and/or equitable contribution from Al-
10 Buhaira and/or Navigators, and each of them, for some or all of Gargrave's respective liabilities.

11 **THIRD CAUSE OF ACTION**

12 **(Tort of Another Against Al-Buhaira and Navigators)**

13 13. Gargrave refers to and incorporates by reference as though fully set forth herein
14 each and every foregoing paragraph of this Third-Party Complaint.

15 14. Gargrave is informed and believes that Al-Buhaira and Navigators made
16 misrepresentations and omissions regarding insurance coverage, their respective liabilities at issue
17 in this proceeding, the condition and state of the vessel, her flag and registry, the type of voyage
18 she was engaged in, and the extent and nature of her equipment. Gargrave further alleges that Al-
19 Buhaira and/or Navigators breached their duties under their policies of P&I insurance, and
20 otherwise. As a direct and proximate result of these negligent and intentional misrepresentations
21 and omissions, and breaches of duty and of contract, by Al-Buhaira and Navigators, and each of
22 them, Gargrave has been compelled to litigate with the United States.

23 15. Gargrave has incurred substantial attorneys' fees and costs in this litigation, and
24 will continue to incur such fees and costs until the issues involved herein are resolved. Gargrave
25 is entitled to recover these fees and costs from Al-Buhaira and Navigators, plus full indemnity for
26 any liability of Gargrave herein, under the doctrine of wrongful act / tort of another.

1 **FOURTH CAUSE OF ACTION**

2 **(Misrepresentation Against Navigators)**

3 16. Gargrave refers to and incorporates by reference as though fully set forth herein
4 each and every foregoing paragraph of this Third-Party Complaint.

5 17. Gargrave issued a COFR to the M/V AJMAN 2, pursuant to a request from and an
6 application submitted by Navigators. That application misrepresented the nature of the risk, the
7 flag and registry of the vessel, her physical condition, her unseaworthiness, her lack of equipment
8 and insufficient crew, and the type of voyage in which she was engaged. The misrepresentations
9 were knowing and intentional when they were made by Navigators. Had Gargrave known the
10 truth about the M/V AJMAN 2, Gargrave would not have issued a COFR to said vessel.
11 Accordingly, for the aforesaid reasons, Gargrave is entitled to a declaration that the COFR it
12 issued to the M/V AJMAN 2 is void, and has no further force and effect. Gargrave is further
13 entitled to rescind and cancel the COFR issued to the M/V AJMAN 2, and is entitled to money
14 damages as a result of the misrepresentations by Navigators.

15 **FIFTH CAUSE OF ACTION**

16 **(Nondisclosure Against Navigators)**

17 18. Gargrave refers to and incorporates by reference as though fully set forth herein
18 each and every foregoing paragraph of this Third-Party Complaint.

19 19. In its request and application for a COFR made to Gargrave, Navigators failed to
20 disclose numerous material facts about the M/V AJMAN 2, including her flag and registry, her
21 physical condition and unseaworthiness, her lack of equipment and inadequate crew, and the
22 nature of the voyage in which she was engaged. Navigators knew, when it failed to disclose those
23 material facts to Gargrave, that Gargrave had no other source from which to glean that
24 information.

25 20. As a result of the nondisclosures by Navigators, Gargrave is entitled to a
26 declaration that the COFR it issued to the M/V AJMAN 2 is void and of no further force and
27 effect. Gargrave is further entitled to rescind and cancel the COFR. Gargrave is also entitled to
28 money damages for the intentional nondisclosures by Navigators.

1 **SIXTH CAUSE OF ACTION**

2 **(Negligence Against Navigators)**

3 21. Gargrave refers to and incorporates by reference as though fully set forth herein
4 each and every foregoing paragraph of this Third-Party Complaint.

5 22. In applying to Gargrave for the COFR, Navigators was negligent in failing to
6 disclose numerous material facts about the risk, including the flag and registry of the vessel, the
7 condition of the vessel, her unseaworthiness, her lack of equipment and inadequate crew, and the
8 nature of the voyage in which she was engaged. In addition, Navigators negligently
9 misrepresented those material facts, and others, to Gargrave. As a result of the negligence of
10 Navigators, Gargrave is entitled to rescind the COFR, and to cancel it. Gargrave is also entitled
11 to a declaration from this Court that the COFR issued to the M/V AJMAN 2 is null and void, and
12 of no further force and effect. Gargrave is also entitled to money damages for the negligence of
13 Navigators.

14 **DEMAND FOR JUDGMENT IN FAVOR OF PLAINTIFF**

15 23. Pursuant to F.R.C.P. 14(c), Gargrave hereby demands judgment against Al-
16 Buhaira and Navigators, in favor of plaintiff United States, and further demands that Al-Buhaira
17 and Navigators answer and make any defenses to the claims of the United States, as set forth in
18 the Verified Complaint, directly, as well as to the claims of Gargrave.

19 **PRAYER**

20 **WHEREFORE**, Third-Party Plaintiff Gargrave prays for judgment as follows:

21 1. For full and complete indemnification from the Third-Party Defendants, and each
22 of them, jointly and severally, in the event Gargrave is held liable in the principal action herein,
23 or in the event Gargrave makes any settlement with the plaintiff United States herein;

24 2. For contribution from the Third-Party Defendants, and each of them, jointly and
25 severally, in the event Gargrave is held liable in the principal action herein, or in the event
26 Gargrave makes any settlement with the plaintiff United States herein;

27 3. For a judgment pursuant to the provisions of F.R.C.P. 14(c) directly against the
28 Third-Party Defendants, and each of them, jointly and severally, in favor of the plaintiff United

States, and for the Third-Party Defendants, and each of them, to make their defenses and answers directly to the claims of the United States, as well as to the claims herein of Third-Party Plaintiff Gargrave;

4. For judgment against the Third-Party Defendants, jointly and severally, for Gargrave's costs, expenses and reasonable attorneys' fees incurred in defense of the United States' Verified Complaint and other pleadings; and

5. For such other and further relief as this Court may deem just and proper..

DATED: September 19, 2006 TARPLEY & MORONI, LLP

By:

THOMAS M. TARPLEY, JR.,
Attorneys for Defendant, Counter-Complainant,
Cross-Complainant, and Third-Party Defendant
S.J. GARGRAVE SYNDICATE 2724 in
personam

United States District Court

District of GUAM

PLAINTIFF

UNITED STATES OF AMERICA, v.
INCHAPPE SHIPPING SERVICES GUAM, LLC,
PLAINTIFF IN INTERVENTION,

V. DEFENDANT AND THIRD PARTY PLAINTIFF

MARWAN SHIPPING & TRADING CO., FIVE SEAS
SHIPPING CO., LLC and .S.J. GARGRAVE
SYNDICATE 2724, IN PERSONAM

V. THIRD PARTY DEFENDANT

AND CROSS-CLAIMS, COUNTERCLAIM
AND CLAIM IN INTERVENTION

THIRD PARTY SUMMONS IN A CIVIL ACTION

CASE NUMBER: CIVIL 06-00011

TO: (Name and Address of Third Party Defendant)

AL-BUHAIRA NATIONAL INSURANCE CO.
AL-BUHAIRA TOWER, CORNICHE ROAD
KALID LAGOON , SHARJAH, P.O. BOX 6000, UAE

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

PLEASE SEE "SERVICE LIST" ATTACHED
HERETO AS EXHIBIT A.

DEFENDANT AND THIRD-PARTY PLAINTIFF'S ATTORNEY
(name and address)

PLEASE SEE "SERVICE LIST" ATTACHED
HERETO AS EXHIBIT A.

First Amended

an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff. You have the option of answering or not answering the plaintiff's complaint, *unless* (1) this is a case within Rule 9(h) Federal Rules of Civil Procedure, *and* (2) the third-party plaintiff is demanding judgment against you in favor of the original plaintiff under the circumstances described in Rule 14(c) Federal Rules of Civil Procedure, in which situation you are required to make your defenses, if any, to the claim of plaintiff as well as to the claim of the third-party plaintiff.

MARY L. M. MORAN
Clerk Of Court

SEP 20 2006

CLERK

DATE

(BY) DEPUTY CLERK

ORIGINAL

Case 1:06-cv-00011

Document 75

Filed 11/17/2006

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Exhibit A

Service List

<i>Attorneys for Plaintiff and Counterdefendant United States of America</i> R. Michael Underhill, Esq. Mimi Moon, Esq. U.S. Dep't of Justice/Torts Branch 450 Golden Gate Avenue PO Box 36028 San Francisco, CA 94102-3361 Mike.Underhill@usdog.gov Mike W. Schwab, Esq. Office of the U.S. Attorney General 108 Hernan Cortez Avenue, Suite 500 Hagatna, Guam 96910 Mikel.Schwab@usdoj.gov	<i>Attorneys for Defendant, Cross-Complainant, and Third-Party Complainant S.J. Gargrave Syndicate 2724</i> Forrest Booth, Esq. Ryan Donlon, Esq. Severson & Werson One Embarcadero Center, Suite 2600 San Francisco, CA 94111-3627 FB@severson.com RCD@severson.com Thomas Tarpley, Esq. Tarpley & Moroni Bank of Hawaii Building 134 Soledad Avenue, Suite 402 Hagatna, Guam 96910 Tarpley@guam.net
<i>Attorneys for Intervenor Inchage Shipping Services Guam LLC</i> David P. Ledger, Esq. Elyze J. McDonald, Esq. Carlsmith Ball LLP Bank of Hawaii Building, Suite 401 134 West Soledad Avenue Hagatna, Guam 96910 DLedger@carlsmith.com EMcDonald@carlsmith.com	<i>Attorneys for Defendants and Cross- Defendants Marwan Shipping & Trading Co. and Five Seas Shipping Co., LLC</i> John E.D. Powell, Esq. Stafford Reys Cooper 601 Union Street, Suite 3100 Seattle, WA 98101-1374 JPowell@staffordrey.com Lawrence J. Teker, Esq. Teker Torres & Teker, P.C. Suite 2-A, 130 Aspinall Avenue Hagatna 96910-5018, Guam L.Teker@tttguamlawyers.com
<i>Third-Party Defendant Navigators Protection & Indemnity</i> Andrew Barker Michael D. Newbery Richard Rea Room 974, Lloyd's, One Lime Street London, EC3M 7HA, England, UK MNewbery@navg.com RRea@navg.com	<i>Third-Party Defendant Al-Buhaira National Insurance Co.</i> Nader T. Qaddumi (General Manager) Yousif R. Latif (Dy. General Manager – Marine) Al Buhaira Tower, Corniche Road Khalid Lagoon, Sharjah, P.O. Box 6000 United Arab Emirates abnicho@albuhaira.com

RETURN OF SERVICE		
Service of the Summons and complaint was made by me(1)	DATE	
NAME OF SERVER	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the third-party defendant. Place where served: _____ _____ </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the third-party defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: _____ _____ </div> <div> <input type="checkbox"/> Other (specify): _____ _____ _____ </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> Executed on _____ <div style="text-align: center; font-size: small;">Date</div> </div> <div style="width: 60%;"> _____ <div style="text-align: center; font-size: small;">Signature of Server</div> </div> </div> <div style="text-align: center;"> _____ <div style="font-size: small;">Address of Server</div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

COPY

FILED

DISTRICT COURT OF GUAM

APR 19 2006

MARY L.M. MORAN
CLERK OF COURT

PETER D. KEISLER
Assistant Attorney General
LEONARDO M. RAPADAS
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San Francisco, California 94102-3463
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Fax: (415) 436-6632
mike.underhill@usdoj.gov

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in personam*,

Defendants.

Civil No. 06-00011
IN ADMIRALTY

VERIFIED COMPLAINT OF
THE UNITED STATES

Plaintiff, the United States of America alleges upon information and belief as follows:

GENERAL ALLEGATIONS

1. This is a case of admiralty and maritime jurisdiction against Defendants MARWAN SHIPPING & TRADING CO., FIVE SEAS SHIPPING CO., LLC, and S.J. GARGRAVE SYNDICATE 2724, *in personam*, as hereinafter more fully appears, and within Rule 9(h) of the Federal Rules of Civil Procedure.

//

VERIFIED COMPLAINT

1 2. The United States is authorized to bring this suit pursuant to 28 U.S.C. § 1345,
2 33 U.S.C. §§ 1321 and 2717.

3 3. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391 and 1395, and
4 33 U.S.C. § 2717.

5 4. The United States also brings this action on behalf of the Oil Spill Liability
6 Trust Fund (hereafter "Fund"), pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.,
7 to recover any and all removal costs and damages incurred directly by the Fund, any removal costs
8 and damages incurred by the Fund through compensation paid to any claimant, and all costs incurred
9 by the Fund by reason of any such claims, including interest, prejudgment interest, adjudicative
10 costs, and attorney's fees. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2712(f), the United
11 States has acquired by subrogation, or may in the future acquire by subrogation, the rights of any
12 claimant or State paid compensation from the Fund, and the United States specifically reserves the
13 right to amend this Verified Complaint to assert any or all such subrogated rights and claims.

14 5. At all times material herein, Defendant MARWAN SHIPPING & TRADING
15 CO. ("MARWAN") had a place of business in the United Arab Emirates and was doing business in
16 Guam and within this district and within the jurisdiction of this Court, including through ownership
17 and operation of the M/V AJMAN 2 at the time of, and with respect to, the matters sued upon herein.

18 6. At all times material herein, MARWAN owned the M/V AJMAN 2.

19 7. At all times material herein, MARWAN operated the M/V AJMAN 2.

20 8. At all times material herein, MARWAN managed the M/V AJMAN 2.

21 9. At all times material herein, MARWAN chartered the M/V AJMAN 2.

22 10. At all times material herein, MARWAN controlled the M/V AJMAN 2.

23 11. At all times material herein, Defendant FIVE SEAS SHIPPING CO., LLC
24 ("FIVE SEAS") had a place of business in the United Arab Emirates and was doing business in
25 Guam and within this district and within the jurisdiction of this Court, including through ownership,
26 operation, and chartering of the M/V AJMAN 2 at the time of, and with respect to, the matters sued
27 upon herein.
28

1 12. At all times material herein, FIVE SEAS was owner *pro hac vice* of the M/V
2 AJMAN 2.

3 13. At all times material herein, FIVE SEAS operated the M/V AJMAN 2.

4 14. At all times material herein, FIVE SEAS managed the M/V AJMAN 2.

5 15. At all times material herein, FIVE SEAS chartered the M/V AJMAN 2.

6 16. At all times material herein, FIVE SEAS controlled the M/V AJMAN 2.

7 17. At all times material herein, and by reason of the matters alleged in this
8 Complaint, Defendants MARWAN and FIVE SEAS were "responsible parties" within the meaning
9 of the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

10 18. At all times material herein, Defendant S.J. GARGRAVE SYNDICATE 2724
11 had a place of business in London, England, and was doing business in the United States and Guam
12 and within this district and within the jurisdiction of this Court, including, but not limited to, by
13 insuring and/or providing evidence of financial responsibility and certain guarantees pertaining to
14 marine oil pollution liabilities incurred by or through the M/V AJMAN 2.

15 19. S.J. GARGRAVE SYNDICATE 2724 has provided evidence of financial
16 responsibility and certain guarantees pertaining to the said vessel pursuant to statute and regulations;
17 accordingly, pursuant to those statutes and regulations, and up to the monetary limits of its statutory
18 and regulatory liability, the United States of America is entitled to bring its claims directly against
19 said guarantor.

20 20. At all times material herein, Defendants MARWAN and FIVE SEAS, in
21 addition to Defendant S.J. GARGRAVE SYNDICATE 2724, the latter solely up to the monetary
22 limits of its statutory and regulatory liability, were agents of each other and are therefore responsible
23 and liable, jointly and severally, for all of each of the others' obligations, acts, omissions, and strict
24 liability with respect to the matters alleged in this Complaint and action.

25 21. In or about August and September, 2004, M/V AJMAN 2, while in the
26 Exclusive Economic Zone, territorial seas, and navigable waters of the United States, posed a
27 substantial threat of pollution to navigable waters of the United States, including the waters of Apra
28 Harbor, Guam, and the resulting substantial threat of pollution to adjoining shorelines. The said

1 substantial threat of pollution included, but was not limited to, the fact that M/V AJMAN 2 grounded
2 at Family Beach, adjacent to Hotel Wharf, in Apra Harbor. The foregoing substantial threat of
3 pollution, including other acts and omissions to be established according to proof at trial, are
4 hereafter referred to as the "OPA Incident", said term "OPA" referring to the Oil Pollution Act of
5 1990, 33 U.S.C. § 2701, *et seq.*

6 22. The OPA Incident was proximately caused, *inter alia*, by the acts, omissions,
7 and strict liability of M/V AJMAN 2, her owners, crew, agents, servants, employees, and others for
8 whom MARWAN and FIVE SEAS were responsible, all within the privity and knowledge of
9 MARWAN and FIVE SEAS.

10 23. As a result of the OPA Incident, and in order to alleviate the substantial
11 threat of pollution caused by M/V AJMAN 2, the United States of America, by and through its
12 various agencies and others acting on its behalf, responded to the OPA Incident and incurred removal
13 costs and damages within the meaning of the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

14 24. The precise amount of removal costs and damages sustained by the United
15 States presently exceeds \$829,051, the exact amount of said removal costs and damages to be
16 established according to proof at the time of trial, plus interest, administrative charges, costs,
17 disbursements, and statutory attorneys' fees.

18 **AS AND FOR A FIRST CAUSE OF ACTION AGAINST**
19 **MARWAN, FIVE SEAS, AND S.J. GARGRAVE SYNDICATE 2724, *IN PERSONAM***
20 **(OIL POLLUTION ACT OF 1990)**

21 25. Plaintiff, United States of America, refers to and incorporates by reference as
22 though fully set forth herein each and every foregoing paragraph of this Complaint.

23 26. Pursuant to the Oil Pollution Act of 1990, each responsible party for a vessel
24 from which oil is discharged, or which poses the substantial threat of discharge, into or upon the
25 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is
26 strictly liable for all costs, damages, and/or disbursements specified in the Act.

27 27. Under the circumstances herein, MARWAN, FIVE SEAS, and S.J.
28 GARGRAVE SYNDICATE 2724 are liable to the United States of America, without limitation, for

1 all the aforesaid costs, damages, and/or disbursements sustained by the United States as a result of
2 the OPA Incident.

3 **AS AND FOR A SECOND CAUSE OF ACTION AGAINST MARWAN, FIVE SEAS,**
4 **AND S.J. GARGRAVE SYNDICATE 2724, *IN PERSONAM***
5 **(OIL POLLUTION ACT OF 1990)**

6 28. Plaintiff, United States of America, refers to and incorporates by reference as
7 though fully set forth herein each and every foregoing paragraph of this Complaint.

8 29. Pursuant to the Oil Pollution Act of 1990, the Fund shall be subrogated to all
9 rights, claims, and causes of action of claimants to whom it has paid compensation.

10 30. As a result of the OPA Incident, the Fund may incur costs, damages, and/or
11 disbursements by reason of claims for removal costs and damages brought against it under the Oil
12 Pollution Act of 1990:

13 31. Pursuant to the Oil Pollution Act of 1990, MARWAN, FIVE SEAS, and S.J.
14 GARGRAVE SYNDICATE 2724 are liable to the United States of America for all such costs,
15 damages, and/or disbursements which may be sustained by the Fund.

16 32. The aforesaid costs, damages, and/or disbursements of the Fund, as provided
17 in the Oil Pollution Act of 1990, are presently unascertained.

18 WHEREFORE, the United States of America prays as follows:

19 1. That United States of America be granted judgment against Defendants MARWAN,
20 FIVE SEAS, and S.J. GARGRAVE SYNDICATE 2724, *in personam*, pursuant to the verified
21 Complaint of the United States herein;

22 2. That the United States of America be granted declaratory judgment against
23 Defendants MARWAN, FIVE SEAS, and S.J. GARGRAVE SYNDICATE 2724, *in personam*, for
24 pollution removal costs or damages binding on any subsequent action or actions to recover further
25 removal costs or damages, plus interest, costs, disbursements, and attorneys' fees;

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1 3. The United States expressly reserves the right to amend this Complaint to add parties
2 and/or causes of action, as may be necessary;

3 4. For such other relief as the Court deems just and proper in the premises.

4 Dated: March 29, 2006.

PETER KEISLER
Assistant Attorney General
LEONARDO M. RAPADAS
United States Attorney
MIKEL W. SCHWAB, Assistant U.S. Attorney

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8 
9 R. MICHAEL UNDERHILL
Attorney in Charge
Torts Branch, Civil Division, West Coast Office
U.S. Department of Justice

10
11 Of Counsel

12 THOMAS H. VAN HORN
National Pollution Funds Center
13 United States Coast Guard

14 Attorneys for Plaintiff United States of America
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VERIFICATION

R. MICHAEL UNDERHILL says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: March 29, 2006.


R. MICHAEL UNDERHILL